



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/642,355	08/14/2003	William E. Sobel	SYMAP024	1616
35833	7590	01/25/2008	EXAMINER	
VAN PELT & YI LLP 10050 N. FOOTHILL BLVD. SUITE 200 CUPERTINO, CA 95014			NGUYEN, MERILYN P	
ART UNIT		PAPER NUMBER		
2163				
MAIL DATE		DELIVERY MODE		
01/25/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)
	10/642,355	SOBEL, WILLIAM E.
	Examiner Merilyn P. Nguyen	Art Unit 2163

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 06 November 2007.
 2a) This action is **FINAL**. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1,3-5,9-13,26 and 30-46 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) Claim(s) _____ is/are allowed.
 6) Claim(s) 1,3-5,9,13,26,30-32,34-37,41-44 and 46 is/are rejected.
 7) Claim(s) 10-12,33,38-40 and 45 is/are objected to.
 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on 07 August 2006 is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) Notice of References Cited (PTO-892)
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
 3) Information Disclosure Statement(s) (PTO/SB/08)
 Paper No(s)/Mail Date _____

4) Interview Summary (PTO-413)
 Paper No(s)/Mail Date. _____
 5) Notice of Informal Patent Application
 6) Other: Detailed action.

DETAILED ACTION

1. In response to the communication dated 11/06/2007, claims 1, 3-5, 9-13, 26 and 30-46 are pending in this application as the result of the cancellation of claims 7-8.

Continued Examination Under 37 CFR 1.114

2. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 11/06/2007 has been entered.

Specification

3. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: The amended claim 26 recites “tangible” which the specification was failed to provide antecedent basis for the term “tangible”.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 1, 3-5, 7-13, 26 and 30-46 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claims 1, 26 and 34, the term “it” (“if it is) renders the claim vague and indefinite because the Examiner does not know what “it” meant by Applicant.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

5. Claim 26 stand rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

In the present case, amended claimed invention (Claim 26) recites a tangible¹ computer readable storage medium that is defined in the Applicant's specification broader to read on signals embodied on a carrier wave (Page 16, line 15). Page 16, line 5 of specification states, “The computer readable medium is **any data storage device** that **can store data** which can thereafter be read by a computer system” and later at line 14, “The computer-readable medium can also be distributed as **a data signal embodied in a carrier wave** over a network of coupled computer systems **so that the computer-readable code is stored** and executed in a distributed fashion”. (Emphasis added). Thus, the specification broadly describe “a data signal embodied in a carrier wave” is the data storage medium used to store the computer-readable code. Signals

¹ Please notes that the specification failed to provide proper antecedent basis for “tangible”.

embodied on a carrier wave is not a process, a machine, manufacture, nor composition of matter, thus is a non-statutory subject matter.

All other claims are rejected under 101 for failing to solve the deficiencies of claim 26 from which it depends.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. Claims 1, 3-5, 26, 31-32, 34, 35-36, 43-44 and 46 are rejected under 35 U.S.C. 102(e) as being anticipated by Green (US 2006/0107006).

Regarding claims 1, 26 and 34, Green discloses a method, a system comprising a processor and a memory (See Fig. 1) a computer program product for rolling a computer resource back (restoration file/files) to a state associated with a computer image (snapshot) (See page 12, beginning with paragraph [0144] to page 13 ending with paragraph [0160]) comprising:

- determining a roll-back state associated with the computer image (See page 12, paragraphs [0144] and [0147]);
- determining whether the roll-back state is secure (See page 13, paragraphs [0159-0160]); and

- performing one or more remediation actions prior to or during a roll-back of the computer resource to the roll-back state if it is determined that the roll-back state is not secure (See page 13, paragraph [0160], “an antivirus computer program is later installed following infection of the computer system. The antivirus program thus is able to detect a computer virus in the HDD data history so that the computer system can be restored to the immediately previous day”); and
- rolling back the computer resource if it is determined that the roll-back state is secure (See page 13, paragraph [0160], “Files and data not infected can also then be retrieved from the snapshots that were taken during the computer infection once the system has been restored to an uninfected state”);
- wherein determining whether the roll-back state is secure comprises scanning data comprising the computer image to determine whether the computer resource, if rolled back to the roll-back state, would be one or both of:
 - vulnerable to a known external attack; and
 - in a compromised state as a result of a prior external attack made at a time prior to the computer image being generated (please see paragraph [0160]).

Regarding claims 3-5 and 35-36, Green discloses wherein the image is a system image, a file or an application image (See Fig. 2, snapshots 280).

Regarding claims 31 and 43, Green discloses wherein performing one or more remediation actions includes stopping the roll-back during the roll-back of the computer resource (See page 13, paragraph [0160]).

Regarding claims 32 and 44, Green discloses wherein the remediation actions may be configured by a user, system/network administrator, or other person (See page 13, paragraph [0160]).

Regarding claims 46, Green discloses wherein the image is a system image (See Fig. 2, snapshots 280).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 9 and 37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Green (US 2006/0107006), in view of Stefik (US 2003/0208447).

Regarding claims 9 and 37, Green discloses all the claimed subject matter as set forth above; however, Green is silent as to evaluating a security definition in a repository providing data to the roll-back state. On the other hand, Stefik teaches evaluating a security definition in a repository providing data to the roll-back state (See page 14, paragraphs [0205] and [0215], Stefik et al.). It would have been obvious to one having ordinary skill in the art at the time of the

invention was made to check for the security of the roll-back state by assigning and evaluating security level in the repository providing data to the roll-back state. The motivation would have been to make sure that the recovery of data is always secure by setting security level.

8. Claims 13, 30 and 41-42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Green (US 2006/0107006), in view of Shen (US 6,611,850).

Regarding claims 13 and 41, Green discloses wherein performing one or more remediation actions includes receiving a user input (See page 13, paragraph [0160], “an antivirus computer program is later installed following infection of the computer system. The antivirus program thus is able to detect a computer virus in the HDD data history so that the computer system can be restored to the immediately previous day”). However, Green is silent as to displaying a message. On the other hand, Shen teaches display an alert message (See col. 15, lines 41-47, Shen et al.). It would have been obvious to one having ordinary skill in the art at the time of the invention was made to display an alert message about the file infected by a virus or corrupted. The motivation would have been to allow the user/administrator to have appropriate action before restore any file.

Regarding claims 30 and 42, Green/Shen discloses wherein performing one or more remediation actions includes displaying a warning to a user as addressed above.

Allowable Subject Matter

9. Claims 10-12, 33, 38-40 and 45 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Merilyn P Nguyen whose telephone number is 571-272-4026.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Don Wong can be reached on 571-272-1834. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

MN
AU 2163


WILSON LEE
PRIMARY EXAMINER